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ABSTRACT

An analysis of Census Bureau data on registration and voting by black citizens over the past two decades shows the positive influence of the 1965 Voting Rights Act on electoral participation. After the passage of the act, there was more than a 50% increase in the number of black registered voters. Of black and white citizens participating in the last five presidential elections, southern blacks are the only group to report a net gain in level of participation between 1964 and 1980. There has also been a tenfold increase in the number of blacks elected as officeholders. However, this does not mean that blacks have achieved equal access to elective office. For example, it is difficult for black voters to elect officials from their communities. Data from the Justice Department's Voting Rights Division shows that a pattern of white resistance to blacks exercising their voting rights still remains strong in the South. Impediments, such as vote dilution issues, will remain salient in coming years. In the future, the consequences of the adoption by Congress of either a "result" or an "intent" test in cases brought under section 2 of the act will have an impact on the equal access of minorities to political participation. (RM)

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The Voting Rights Act and Black Electoral Participation

Kenneth H. Thompson

SP 014 442

Joint Center For Political Studies, Washington, D.C. 1982

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Equal laws protecting equal rights are . . . the best guarantee of loyalty and love of country.

--James Madison, 1820

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INTRODUCTION

Purpose of the Research

This study addresses two related questions concerning the Voting Rights Act. First, what has been the impact of the Voting Rights Act on the level of black electoral participation in the seventeen years since passage of the Act in 1965? The issue is approached here through analysis of data on registration and voting by black citizens over the past two decades. Data on the number and characteristics of black officials elected to office since passage of the Act are analyzed to shed light on the impact of the Act on minority access to elective office. In addition, differing perspectives on the effectiveness of the Voting Rights Act in protecting the suffrage of black citizens today are evaluated.

The second major question addressed by this study is: what is the likely impact of the Voting Rights Act during the decade to come? Data from the Justice Department's Voting Rights Division are analyzed to determine the types of problems likely to constitute the bulk of voting rights cases in the future. Since vote dilution issues are likely to remain salient in the coming years, the special problems such cases present are considered. Finally, the consequences of the adoption by Congress of either a "result" or an "intent" test in cases brought under Section 2 of the Voting Rights Act in the future are discussed.

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The Black Experience

Of all the groups to whom suffrage has been denied in our nation's history, none has struggled longer or suffered more in the attempt to win the vote than black citizens. Conversely, no group has had access to the ballot box denied so persistently and intently as have America's blacks. Over the past century, a broad array of schemes, drawing on a panoply of social, political, and legal resources have been used in attempts to block black voting. The range of techniques developed with the purpose of repressing black voting rights run the gamut from the straightforward application of brutality against black citizens who tried to vote to such legalized frauds as "grandfather clause" exclusions and rigged literacy tests. They include the currently more popular techniques of tampering with absentee-ballots and gerrymandering electoral districts. The very number and variety of such machinations bear witness to the depth of the resolve in some quarters that blacks will not be allowed access to the ballot, that blacks will not be allowed a place on the ballot, and, if all else fails, that the ballots of blacks will not be allowed to count for anything.

The century-long history of black attempts to achieve the right to vote and white attempts, particularly in the South, to deny them that right illuminates the stakes involved. Voting is no mere privilege, nor is it just an act of symbolic significance. The right to vote is a fundamental political right because, as the Supreme Court has ruled, it is "preservative of all rights." (Reynolds v. Syms, 377 U.S. 533, 1964). Since exercise of the franchise is an essential means by which our citizens ensure that those governing will be responsible, denial of access to the ballot box ultimately results in the denial of other fundamental rights.

Remedies Provided by the 1965 Voting Rights Act

Passage of the Voting Rights Act in 1965 provided the first effective legislative means of combating voting discrimination since the end of the Civil War a century before. The 1965 Act had been preceded by three other federal laws in the previous decade, all of which had failed to stop racial discrimination in voting. The unique feature of the 1965 Voting Rights Act that enabled it to be more effective when prior efforts had largely failed was a "preclearance" requirement contained in the Act's Section 5.

Instead of relying on complaints from the victims of voting discrimination, Section 5 shifts the burden of proof to governments that had had, at the time the Act was passed, a

history of using discriminatory literacy tests. Under the coverage formula established by Congress in 1965, the provisions of Section 5 apply to Alabama, Georgia, Louisiana, Mississippi, South Carolina, Texas, Virginia, and approximately half the counties of North Carolina. Outside the South, Alaska, Arizona, a part of New York City and small sections of eleven other states are covered.

When a covered jurisdiction wishes to make any change in voting or election procedures, it is required by the Voting Rights Act to prove either to the U.S. District Court for the District of Columbia or to the attorney general of the United States that the proposed change is not discriminatory to protected minorities in purpose or effect. The jurisdiction is free to choose whether it wishes to make this showing in court or before the attorney general; in practice, virtually every proposed change that has been submitted has gone to the attorney general because his procedures are more informal and therefore more convenient than going to court. Under the provisions of Section 5, the attorney general has no more than 60 days in which to decide whether the jurisdiction has adequately shown that the change does not have a discriminatory purpose or effect. If that showing is made--as it is in the great majority of cases--the attorney general notifies the jurisdiction that he does not interpose an "objection." On the other hand, if the showing of non-discrimination is not made, the attorney general interposes an "objection" and the proposed change is blocked.

Section 2 of the Voting Rights Act prohibits racial discrimination in voting in those parts of the country not subject to Section Five's preclearance provisions and also applies to discriminatory voting procedures instituted before 1965.

THE IMPACT OF THE VOTING RIGHTS ACT ON BLACK ELECTORAL PARTICIPATION

Trends in Registration and Voting Levels

This analysis of the impact of the Voting Rights Act on black electoral participation relies on information from the Bureau of the Census, because the bureau's data is the most extensive available for this purpose. Since 1964, the Census Bureau has carried out biennial post-election studies on voter participation in conjunction with its series of Current Population Surveys. The sample is designed to tap roughly one of every 2,000 households. Thus, the typical sample generated by the Census Bureau surveys in recent years has yielded information on about

100,000 respondents in about 45,000 households. Such large samples allow determination of regional as well as national trends in voting according to race of respondent.

Although the Census Bureau's samples are large, the data on levels of voter registration and of actual voting are based entirely on reports by citizens who are polled some time after the election date. Furthermore, the survey includes reports by household members of the behavior of related individuals. Thus data on a son or daughter's registration or voting may be based not on his or her own report but on that of the mother or father in the family. Consequently, when scholars have attempted to validate the reported level of registration and voting with the actual level of political activity recorded by election offices, they have found a consistent overreporting of approximately 12 percentage points for both registration status and voting behavior for recent elections (Katosh and Traugott 1980).

Compounding the difficulties of studying black electoral participation is evidence that the proportion of black citizens misreporting their registration is 10 to 13 percent higher than that of whites and the proportion misreporting their voting an average of 8 percent higher than whites.[1] Examination of data on voter registration levels in the four southern states that compile voting records on the basis of the citizen's race illustrates the nature of the problem (Table 1). Voter registration by whites in the Census sample is underreported in all four states by an average of 4 percent compared to registration statistics compiled by the boards of elections.[2] Black registration is overreported in the Census survey for all four states by an average of over 7 percent.

A similar overreporting is found in Census data on the proportion of black registered voters who actually went to the polls. In the Census post-election survey on the November 1980 elections, 84 percent of the black citizens who were registered claimed to have gone to the polls. But the Joint Center for Political Studies conducted a survey during the 1980 election of precincts in which 90 percent or more of the population was black and found only 61 percent of the registered voters in these precincts actually cast ballots (Williams and Morris 1981).

Unfortunately, objective measures of black electoral behavior tend to be limited in scope. Studies such as Traugott and Katosh's and the Joint Center's suggest national and regional findings but do not lend themselves to state-by-state analysis. Except for Florida, Louisiana, and North and South Carolina, the Bureau of the Census is the only source of state electoral data by race.

Furthermore, the Census is the only source of information on black electoral participation that goes back prior to enactment

Table 1. Percentage of voting-age population registered to vote, by race, in four southern states, 1980.

State	Boards of election data		Census data		Census percentage minus board percentage	
	Whites	Blacks	Whites	Blacks	Whites	Blacks
Florida	71%	46%	64%	58%	-7%	+12%
Louisiana	76%	64%	74%	69%	-2%	+5%
No. Carolina	69%	45%	64%	49%	-5%	+4%
So. Carolina	59%	52%	57%	61%	-2%	+9%

of the Voting Rights Act and asks respondents questions with the same wording election after election. These factors allow us to see trends in levels of black electoral behavior over a number of years uncontaminated by variations in interview wording or changes in the organization carrying out the survey. Perhaps even more important, though the absolute levels of black electoral participation reported in the Census data are likely to be higher than in reality, the trends from year to year appear to reflect actual progressions reliably, owing to the relative constancy with which black citizens overreport their electoral participation (Katosh and Traugott 1980). Since the factors leading to black overreporting are also likely to remain constant from survey to survey, the trends can be useful as indicators of the direction in which black electoral participation is moving.

The logical starting point for this analysis would seem to be the examination of gross trends throughout the entire nation over time. Table 2 brings together the numbers and proportions of black and white citizens participating in the last five presidential elections according to Census data. Figure 1 displays national voting trends by race of respondent in the presidential election immediately preceeding the passage of the Voting Rights Act and in the four subsequent presidential contests as indicated by Census Bureau data. The period from 1964 through our last natinal election has generally been characterized by a general decline in levels of electoral participation among most segments of the American population. For example, among white voters nationwide, the period witnessed a drop in participation level from 71 percent in 1964 to 61 percent in both the 1976 and 1980 elections. Similarly, black electoral participation nationwide declined from 58 percent in both 1964 and 1968 to 49 percent in 1976 and 50 percent in 1980. These national figures are too inclusive to show the impact of the Voting Rights Act.

Figure 2, which shows the proportion of the voting-age population reported voting by race and region, provides a more revealing breakdown of electoral data. Distinctive regional patterns appear over the 16-year period from the 1964 election to that of 1980, which are indeed suggestive of the Act's impact.[3] Voting levels for northern white voters exhibited a constant decline during the period, decreasing from 75 percent reported voting in 1964 to 62 percent by 1980, a drop of 13 percent. In contrast, during the same period southern whites reported the most constant level of voting of any of the groups analyzed. They started out at a 59 percent level of voting participation in 1964, rose three percent in 1968, declined five percent in 1972, and remained at that 57 percent level for the next two elections as well.

Voting by northern blacks generally followed the pattern of diminishing participation among northern whites, but with a

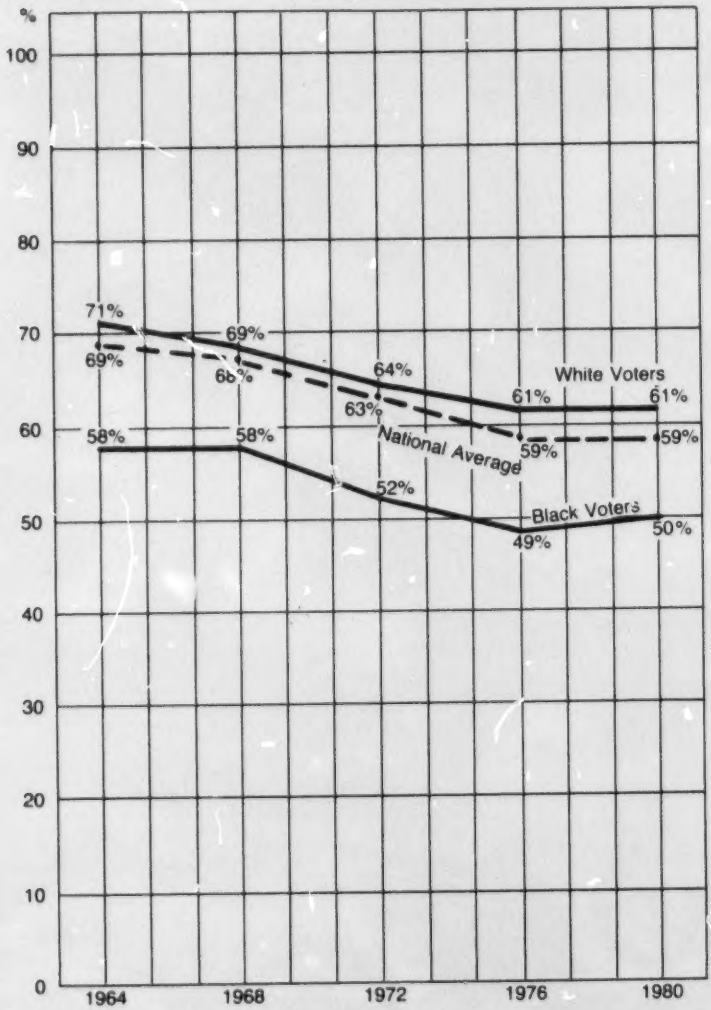
Table 2. National registration and voting by race, 1964-1980.

	1964	1968	1972	1976	1980
Blacks					
All persons of voting age*	10,724	10,935	13,493	14,927	16,424
Number who reported registering*	NA	7,238	8,837	8,725	9,849
Percentage of voting-age population reported registered	NA	66%	65%	59%	60%
Number who reported voting*	6,467	6,300	7,032	7,273	8,287
Percentage of voting-age population reported voting	57%	58%	52%	49%	50.5%
Percentage of registered population reported voting	NA	87%	80%	83%	84%
Whites					
All persons of voting age*	114,090	104,521	121,243	129,316	137,265
Number who reported registering*	NA	78,835	88,987	88,329	94,112
Percentage of voting-age population reported registered	NA	75%	73%	68%	68%
Number who reported voting*	70,204	72,213	78,166	78,808	83,855
Percentage of voting-age population reported voting	71%	69%	64%	61%	61%
Percentage of registered population reported voting	NA	92%	88%	89%	89%

Data Source: Bureau of the Census post-election surveys.

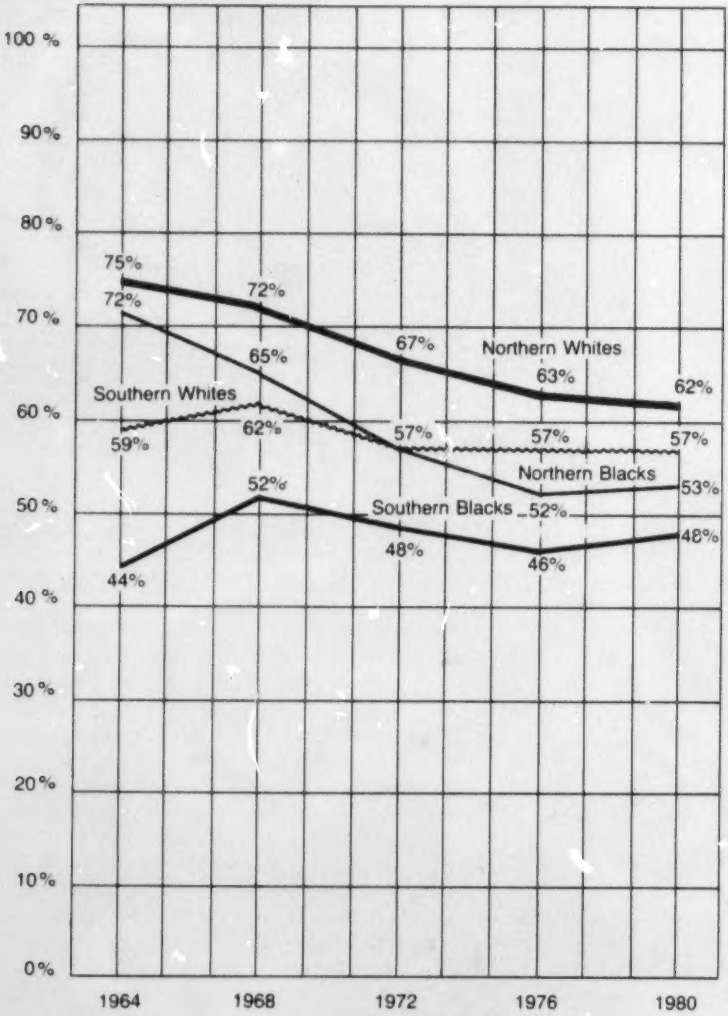
*In thousands.

Figure 1.
Proportion of the Voting-Age Population Reporting Voting in Presidential Election, by Race, 1964-1980.



Data source: Census Bureau post-election surveys.

Figure 2.
Proportion of the Voting-Age Population Reporting Voting in Presidential Election, by Region and Race of Respondent, 1964-1980.



Data source: Census Bureau post-election surveys.

somewhat steeper decline. In the 1964 presidential election, 72 percent of all northern blacks reported voting; by the last two presidential elections, that level had dropped by 20 percent.

Southern blacks are the only group to report a net gain in level of participation between 1964 and 1980. In the 1964 election--before passage of the Voting Rights Act--44 percent of blacks in the South reported voting. By the presidential election following passage of the Act, southern black voting had risen to 52 percent and, while voting levels have fluctuated since then, they have remained above the 44 percent level of 1964. Thus, voting trends for southern blacks have run counter to the national trend of declining voter participation, a finding most likely attributable to the protections provided by the Voting Rights Act.

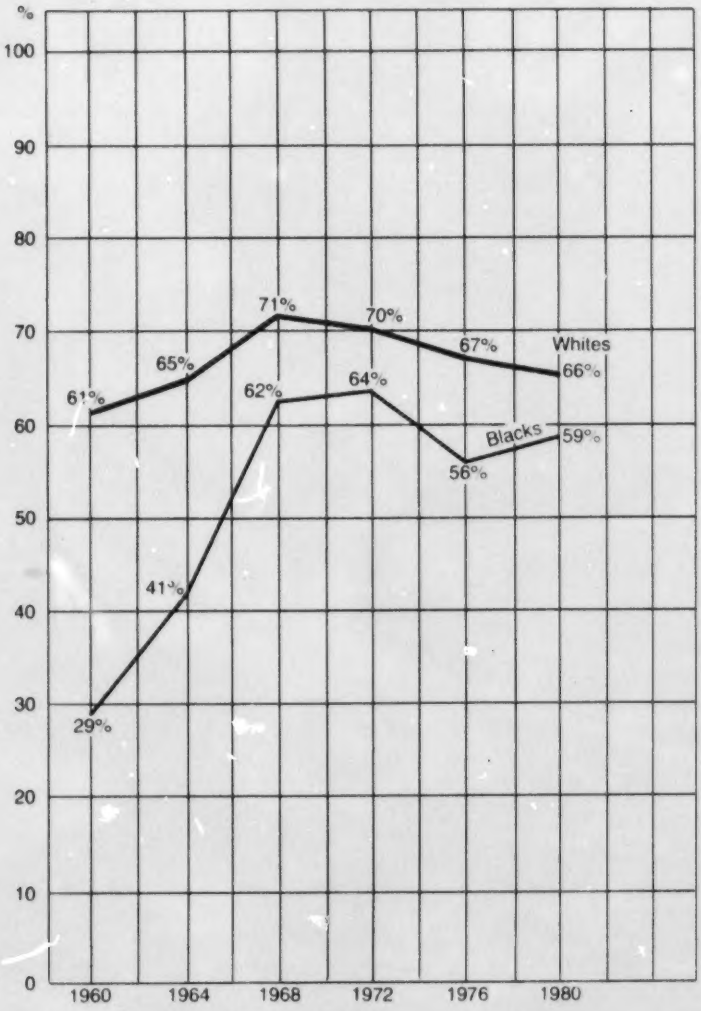
Registration statistics show an even more dramatic increase in black electoral participation in the South since passage of the Voting Rights Act. Figure 3 illustrates the changes in reported voting registration among southern blacks in the last two decades. In 1960, before passage of the Voting Rights Act, black voter registration in the 11 southern states was extremely low, with less than one in three blacks of voting age registered to vote. Among whites, over twice that proportion were then registered. By 1964, the proportion of blacks registered to vote had climbed 12 percent over the registration levels of the previous presidential election but was still 24 percent below the registration level of whites.

After passage of the Voting Rights Act in 1965 came the most dramatic increase in the black voting registration level over the two-decade period, a jump of 21 percent, representing more than a 50 percent increase in the number of southern black registered voters. This increase brought black registration in the South to within 9 percent of the level of southern whites. By the 1972 presidential election, southern black registration had risen to 64 percent. With the 1 percent decline in white voter registration recorded that year, the level of registration claimed by black interviewees in the Census Bureau's poll was only 6 percent lower than that claimed by whites.

In the last two elections, registration has declined among both blacks and whites in the South. White registration fell 4 percent from 1972 to 1980; the overall decline in registration among black southerners during the same period was 5 percent.

This overview of registration and voting trends has shown the positive influence of the Voting Rights Act on levels of black electoral participation in recent years. In the South, black registration shot up 50 percent between the presidential election before passage of the Voting Rights Act and the one four years later. Southern black citizens are the only group to counter the national decline in voter participation by showing a net gain

Figure 3.
Voter Registration in 11 Southern States by Race of Respondent, 1960-1980.



Data source: Census Bureau post-election surveys.

between 1964 and 1980. But these gains have not so far resulted in comparable increases in the ability to elect political candidates from among the black community.

Black Access to Elective Office

Perhaps the most striking change in black political participation since passage of the Voting Rights Act has been the increase in the number of black elected officeholders. Although no definitive data on black elected officials is available for the period prior to passage of the Voting Rights Act, it has been estimated that in 1964 the total number of blacks elected to public office throughout the United States was no more than 300. After enactment of the Act, in the South alone, the number of black elected officials increased tenfold in 12 years, from 177 in 1968 to 2,009 in 1980.

While this increase is striking, it is in some ways misleading. It by no means indicates that blacks have achieved equal access to elective office. For example, Alabama blacks make up over a fourth of the state's citizenry, yet blacks constitute less than one-fifteenth of the elected officials in the state. In Mississippi, black citizens make up more than a third of the population, but blacks hold only one-fourteenth of the elective offices in the state. While equal access does not mean proportional representation, these figures are so disproportionate as to suggest that access is still severely limited.

In Georgia, as Table 3 shows, the 22 counties with a majority of black citizens have elected only 10 blacks among the 84 governing officials. In 15 of these 22 counties not one black governing official has ever been elected, and only one of the 22 counties has a majority of blacks among the governing officials. Furthermore, according to an Atlanta Constitution report, not a single black majority county in Georgia has a black sheriff.

As Figure 4 shows, in the South as a whole, blacks constitute 26 percent of the population but hold only 6 percent of all elective offices. The current group of southern black officeholders would have to double in size and then double again for the proportion of officeholders who are black to come close to reflecting the racial composition of the population.

Not only are there far fewer black officeholders than we would expect if racial bias played no significant part in the electoral process, but the rate at which this gap is closing has slowed almost to a standstill (Figure 5). The rate of increase in the number of black elected officials nationwide has shown a general decline over the last decade, going from a high of 26.6 percent in 1971 to a low of 1.9 percent in 1981. Until 1976, the

Table 3. Race of governing officials in Georgia counties with black population majorities, 1980.

County	Population	Percentage of population black	Number of governing officials	Number of black officials
Baker	3,875	53.0	5	0
Burke	18,255	60.2	5	0
Calhoun	6,606	63.1	5	0
Clay	3,636	61.7	5	0
Crawford	5,748	53.2	3	0
Dooly	10,404	50.1	3	0
Greene	10,212	51.8	5	1
Hancock	9,019	73.8	3	3
Jefferson	17,174	54.5	3	0
Macon	12,933	61.0	5	0
Marion	5,099	52.4	3	0
Peach	15,990	57.1	5	2
Quitman	2,180	60.1	5	1
Randolph	8,734	55.7	5	0
Stewart	6,511	64.4	1	0
Talbot	6,625	67.8	3	1
Taliaferro	2,423	63.6	3	0
Terrell	11,416	59.5	5	1
Twiggs	8,222	56.3	5	1
Warren	6,669	59.1	3	0
Washington	17,480	53.6	3	0
Webster	2,362	58.4	1	0
Total			84	10

Source: Reprinted from the Atlanta Constitution's special report, "Voting: A Right Still Denied," p. 2. Population figures from 1970 U.S. Census; governing body statistics reflect 1980 elections.

Figure 4.

Proportions of State Populations Made Up by Blacks and Proportions of State Offices Held by Blacks in Southern States Covered by the Voting Rights Act, 1980.

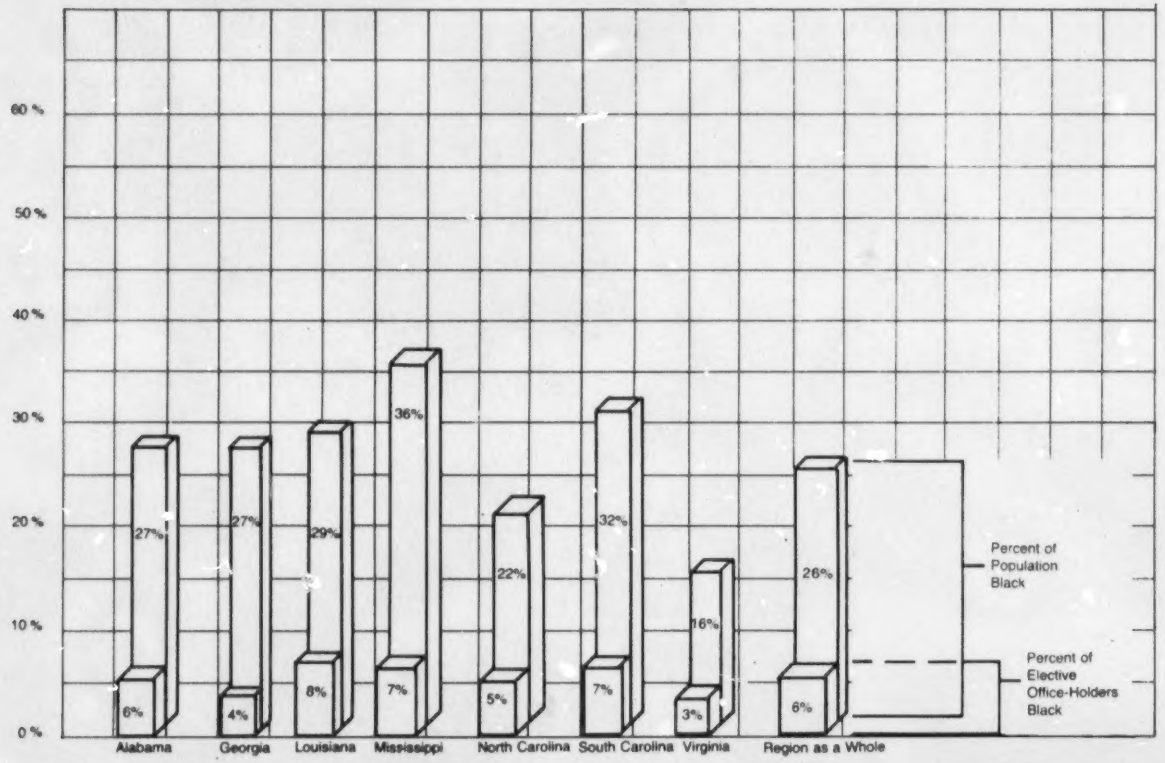
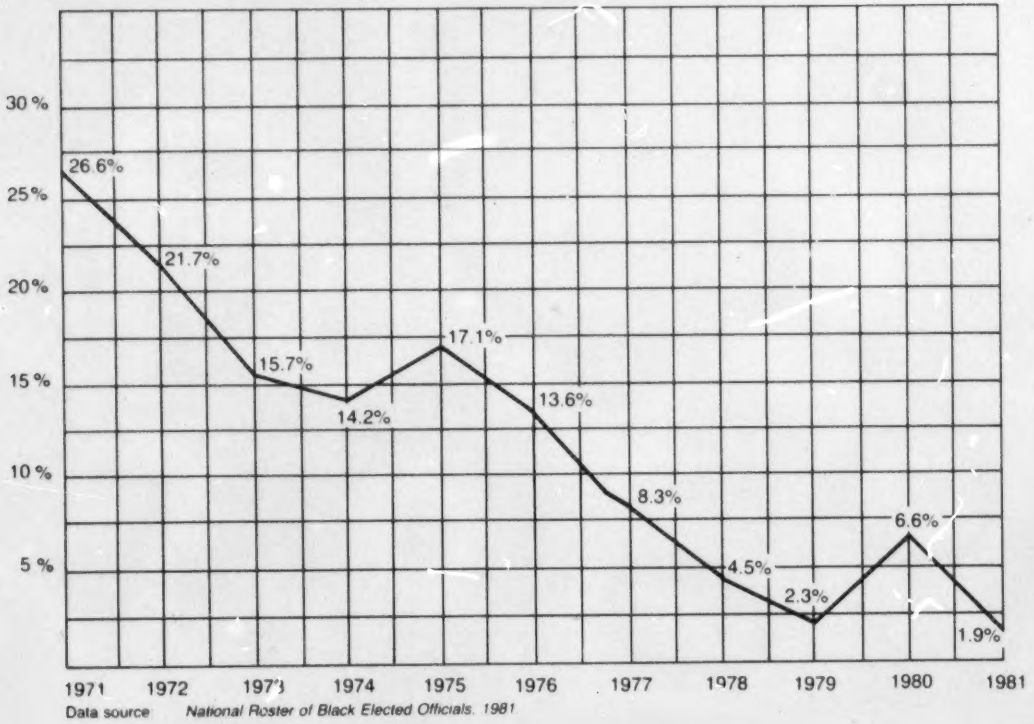


Figure 5

Annual Rate of Increase in Number of Black Elected Officials, 1971-1981.



Data source *National Roster of Black Elected Officials, 1981*

rate of increase averaged 18 percent a year, but in the past 5 years the annual rate of increase has averaged less than 5 percent.

This trend suggests that the early impact of the Voting Rights Act was to stimulate black registration, voting efforts, and candidacy by blacks who, for the first time, saw a realistic possibility of electoral success in certain districts. However, these early successes did not overcome obstacles to black electoral participation across the board. Certain geographic areas, particularly rural jurisdictions, are more resistant to equal electoral participation by black citizens. Furthermore, in many districts, vote dilution techniques have been used to ensure that the black community has no effective political voice. Such continuing pattterns of resistance contribute to the decline in the rate of growth in the number of black elected officials.

The elective offices held by blacks in states covered by Section 5 of the Voting Rights Act are limited in type as well as in number. Figure 6 compares the distribution of black elected officials in the South by type of office with the distribution of white officials in the South. It shows that most of the offices held by blacks are city and town government positions whose scope of responsibility and representation tend to be limited. In contrast, only a fourth of the elective positions held by whites in the South are at the municipal level.

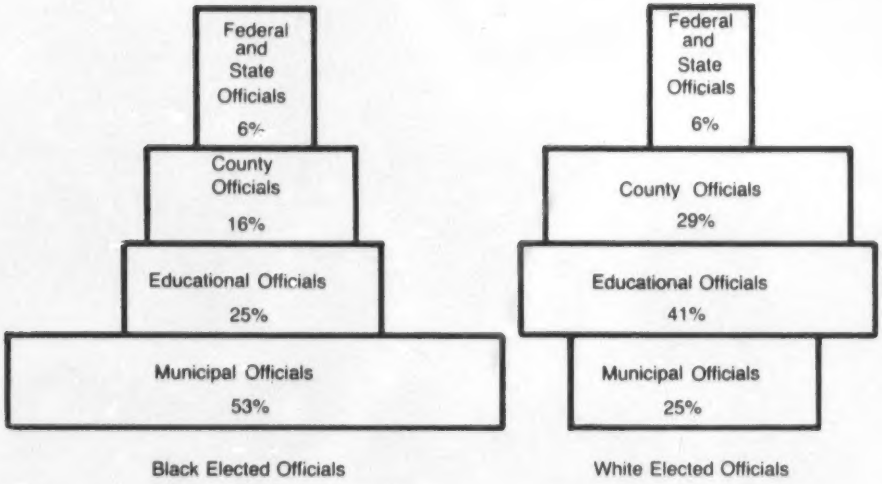
On the other hand, more than two-thirds of the white officials in the South are found in county or educational offices, but only 40 percent of the black elected officials are found at these levels. The magnitude of the disparity between black and white county office holders can be seen in the fact that in 1977, the latest date for which such data are available, blacks held only 208--or less than 2 percent--of the 15,180 elective county offices in the South even though they make up over a fourth of the total population in the area.

Since county governments are particularly influential in the allocation of goods and services in the rural South, such limited black representation at the county level is likely to have far reaching consequences for the lives of local citizens.

Not only do most black elected officials hold municipal offices, the municipalities they represent tend to be villages and small towns that are predominantly black. Figure 7 shows that despite the national attention focused on the election of black mayors in such major metropolitan areas as Atlanta, Birmingham, and New Orleans, the largest group of black mayors in the South is that elected in small towns of less than 1,000 that also have populations over 60 percent black.

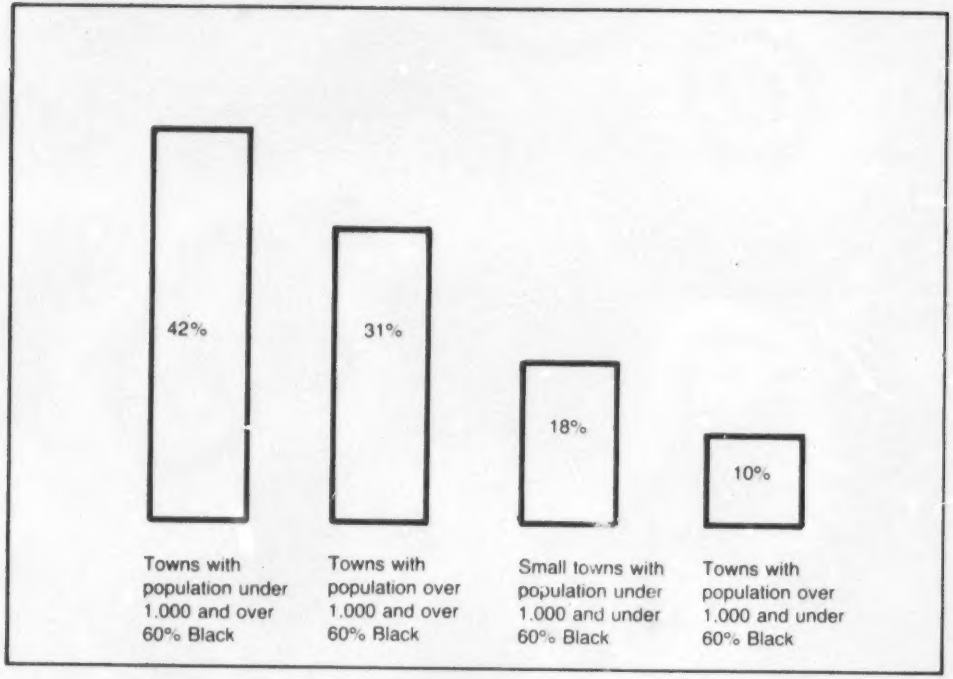
In sum, this analysis of black office-holding leads to the conclusion that, while great strides have been made under the

Figure 6.
Distribution of Elective Offices in Southern States Covered by the Voting Rights Act, by Race of Office-holder and Level of Office, 1980.



Data source: *National Roster of Black Elected Officials, 1980.*

Figure 7.
Distribution of Black Mayors in Southern States Covered by Section 5, by Size of Town and Percentage Black Population, 1981.


42%
31%
18%
10%
Towns with population under 1,000 and over 60% Black
Towns with population over 1,000 and over 60% Black
Small towns with population under 1,000 and under 60% Black
Towns with population over 1,000 and under 60% Black

Data source: *National Roster of Black Elected Officials, 1981*

Voting Rights Act in recent years, particularly in the area of voter registration and voting participation, black citizens are still denied full and fair access to elective office, particularly in the South. Vote dilution schemes as well as outright election fraud still result in extremely small number of blacks being elected to public office and in the relatively localized and politically weak nature of offices they hold.

The Current Impact of the Voting Rights Act

The data analyzed here on minority office-holding show clearly how far black voters are from equality in the ability to elect officials from their communities. The current impact of the Voting Rights Act on the registration and voting of individual blacks is far less clear.

Much evidence shows that a pattern of white resistance to the exercise of voting rights by blacks still remains strong in the South 17 years after passage of the Act. For example, Arthur Flemming, former chairman of the U.S. Commission on Civil Rights, has testified to continued harrassment of blacks who attempt to register and vote. In Mississippi, registration is supposed to be a simple process, but what takes only a few minutes for a white may take up to an hour for a black. Such questions as "Do you own the house you're staying in?" and "Does your employer know you're registering?" are still asked of black registrants, raising fears of economic retaliation. Flemming also testified before Congress that the commission learned of a jurisdiction in Georgia where hostile whites with guns in sight heckled blacks attempting to enter the polls to vote.

Ruth Hinerfeld, president of the League of Women Voters of the United States, has testified that the Texas League of Women Voters reported a large number of irregularities and "errors" in electoral administration in minority precincts. She also testified that psychological pressures are applied to minority registrants in North Carolina with the threat that information obtained from them will be passed on to the Housing Authority and the Department of Social Services.

The Lawyers' Committee for Civil Rights Under Law has documented the impediments to minority registration found in Mississippi today in their publication Voting in Mississippi: A Right Still Denied. Unlike many states, which provide for local registration door-to-door or in shopping centers, Mississippi requires the would-be voter to go in person to the county seat. Thus registration may involve a round-trip journey of up to 100 miles, and even this effort only qualifies the individual for national, state, and county elections. Under Mississippi's system

of dual registration, voters must register again at their city clerk's office to vote in city elections.

The Civil Rights Commission's study of 70 jurisdictions covered by Section 5 of the Voting Rights Act reveals many additional examples of discouragement of black registration and voting. For example, registrars were reported to be discourteous or intimidating when blacks attempted to register, the registration process itself was confined to inconvenient hours and locations, and polling places were often located only in predominantly white communities or in all-white lodge halls. In its "Findings and Recommendations," the Commission on Civil Rights concluded without reservation that the attitudes of southern registrars deter minorities from registering and that blacks continue to be harassed or intimidated by elections officials in attempting to vote (U.S. Commission on Civil Rights 1981).

Furthermore, beyond the overtly political repression that stems from the behavior of elections officials, the racially oppressive web of social and economic relationships between blacks and whites tends to inhibit the free exercise of minority voting rights, particularly in the rural South. Two political scientists, Lester Salamon and Stephen Van Evera, concluded in 1973 that economic dependence and fear of intimidation so frustrate political participation by blacks in the deep South that minority voting rights are not likely to be effectively protected even by the sorts of legal reforms embodied in the Voting Rights Act.

On the other hand, some scholars have maintained that within a decade after passage of the Voting Rights Act its impact was so great as to effectively eliminate repression of black voting in the South. For instance, Raymond Wolfinger and Steven Rosenstone looked at survey data on a number of factors that might influence the likelihood of an individual's voting and concluded that black electoral activity is no longer suppressed, even in the South. They state:

> A correct estimate of the relationship between race and turnout requires that socioeconomic differences between the races be held constant. We found that once this was done, there was no evidence of lingering illegal disenfranchisement in the South and no signs that blacks were more affected by the South's generally more restrictive registration laws. [Wolfinger and Rosenstone 1980]

How is it possible to reconcile the evidence of widespread and continuing denials of black electoral rights with the survey

evidence suggesting that illegal disenfranchisement of blacks in the South is a thing of the past?

In the first place, the survey data used by Wolfinger and Rosenstone are based on Census samples that overstate black registration and voting levels. Thus data showing parity in reported levels of electoral participation by black and white citizens with the same socioeconomic characteristics in reality demonstrate a lower level of black electoral participation, since the level reported by black citizens masks a lower level of actual participation.

In the second place, the conclusion that no "lingering illegal disenfranchisement" is taking place rests on the assumption that without such limitations, the levels of electoral participation among blacks will be the same as that of whites. But if the "natural" level of black electoral participation is higher than that of whites, lingering illegal disenfranchisement might have the effect of restricting black electoral activity to levels similar to those reported by whites.

Many scholars have presented evidence that blacks do indeed tend to engage in more electoral activity than whites at comparable educational and economic positions.[4] Richard Shingles reported in a 1981 study that blacks in this country not only exhibit a higher level of electoral activity than whites but also engage in a broader spectrum of political behavior than whites. He concluded, "Blacks are more politically active than whites of comparable socioeconomic status in a wide range of activities which have a considerably more demanding and more significant impact on the participants' lives and the local political process."

A recent study of black political participation in Alabama found that, even in the Deep South, blacks "over-participate" politically compared to whites. Cohen, Cotter, and Coulter point out that even before passage of the Voting Rights Act a much higher proportion of blacks in the South reported talking about politics than whites, although blacks were largely denied the right to register and vote. The authors conclude,

> The Southern black may not have been as apolitical or as inert as . . . portrayed. Given the high rates of talking then, and the high rates of participation now, it might be better to characterize the black in the South of twenty years ago as politicized, but not mobilized. Necessary for mobilization were the destruction of the system of repression, the emergence of black leadership, and activity of the Federal government. Concern for objects political was high among blacks twenty years ago, but the opportunity for political expression was severely restricted. [Cohen, Cotter, and Coulter 1981]

These higher levels of political participation exhibited by black citizens have been ascribed by scholars to a number of factors such as blacks' heightened sense of racial identity, greater community consciousness among blacks, and more cohesive social organizations in the black community. Whatever the causes of the high level of black political motivation, they--in conjunction with the protections of the Voting Rights Act--may well be sufficiently potent to have a net effect at an aggregate level of counterbalancing the continuing efforts by southern whites to hinder black voting. In summary, it is likely that current levels of black electoral activity are as high as they are because for every black citizen still kept from the polls by illegal disenfranchisement, several more have turned out to exercise their voting rights who might not have made the attempt before passage of the 1965 Act.

Such a conclusion in no way extenuates the illegal denial of voting rights to individual black citizens. The fact that most robbery victims are not forced into bankruptcy does not make robbery a less serious crime. Similarly, the fact that many blacks overcome the efforts to rob them of their electoral rights neither mitigates the seriousness of the offense nor nullifies the need for the prohibitory statute. To the contrary, since repression of the electoral participation of blacks is being counteracted by the Voting Rights Act, the Act's continuing necessity is clear.

THE FUTURE IMPACT OF THE VOTING RIGHTS ACT

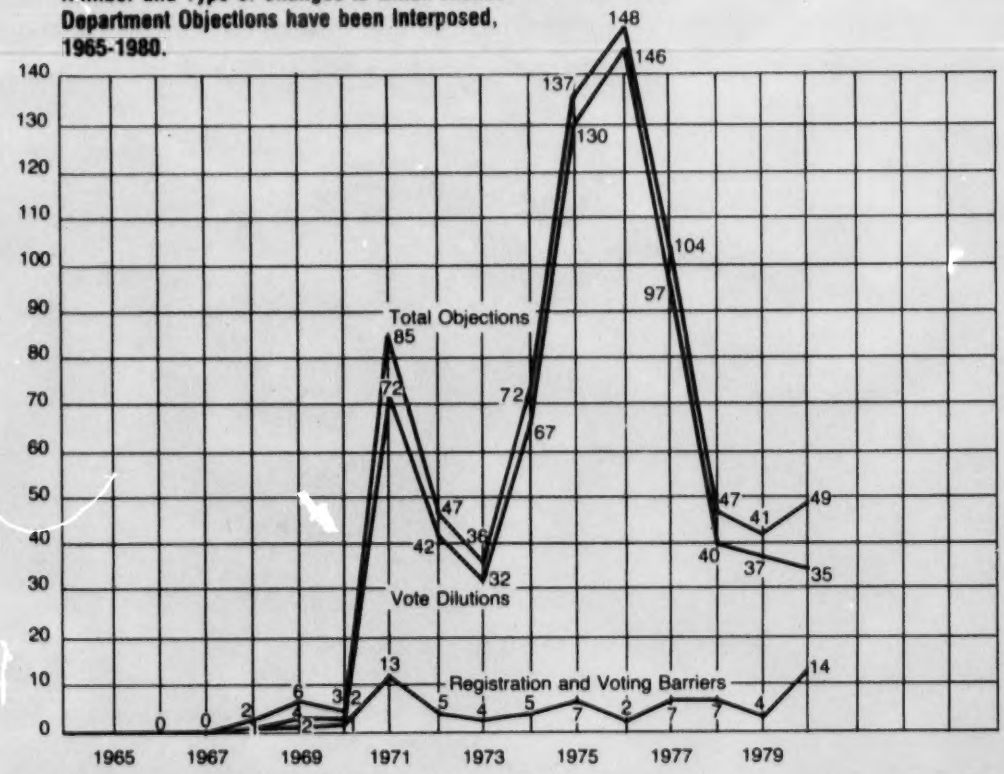
Types of Issues Likely to Arise Under the Act

We have been examining the impact of the Voting Rights Act on the ability of individual black citizens to register and vote. Evidence from various parts of the South has been presented before Congress to document the continued existence of illegal impediments to individual black electoral participation. However, in recent years a more common approach to negating black voting power has been to use vote dilution techniques rather than actual disenfranchisement.

Examination of the number and type of electoral changes to which the Justice Department's Voting Rights Section has lodged objections since passage of the Voting Rights Act provides an indication of trends in discriminatory electoral changes submitted over the past 15 years by election officials in areas covered by Section 5. This data is graphically presented in Figure 8. For Figure 8, all those changes which involved restrictions on an individual's ability to register and vote--such as polling place

Figure 8.

Number and Type of Changes to which Justice Department Objections have been Interposed, 1965-1980.



Data source: Justice Department Voting Rights Section Enforcement Reports.

changes, changes in election date, changes in residency requirements, and changes in registration and voting procedures--are classified together as registration and voting barriers. Vote dilutions, on the other hand, include all those changes which would affect the value of votes cast by blacks, such as annexation changes, changes to at-large elections, redistricting changes, and changes requiring numbered posts.

Until 1970, registration and voting barriers made up approximately 33 percent of the relatively few changes to which the Justice Department objected. From 1970 to 1980, however, such barriers to individual voting have constituted less than 15 percent of the changes found discriminatory. In recent years, vote dilution schemes have constituted between 85 percent and 98 percent of the changes found to be in violation of the Act. Vote dilution has thus become a highly significant issue and will no doubt represent a growing proportion of voting rights cases in the years to come.

Vote Dilution and the Voting Rights Act

Although schemes to dilute the full value of black votes are a primary problem the Voting Rights Act seeks to combat, they pose particularly thorny legal and analytical problems. Unlike such practices as bias in the distribution and collection of absentee ballots or bias in the location of registration and voting facilities, which are obviously corrupt and are relatively easy to detect, certain arrangements--such as at-large elections, runoffs, gerrymandered districts, and so on--can be used just as effectively to dilute minority votes and maintain majority political dominance, but are much more difficult to identify and prove.

The difficulty stems from the fact that electoral systems without discriminatory electoral procedures can also produce election results which underrepresent minorities if such groups lack the political resources to elect their candidates. A group that lacks financial resources, group political cohesion, a tradition of political mobilization, status, or communications skills is likely to be underrepresented among our elective officials even though the electoral procedures are not stacked against them. Thus, just because a group does not have representation among elective officials proportional to its size in the general electorate cannot be conclusive evidence that the elective system itself denies equal political opportunity.

To some, in fact, the Voting Rights Act's mandate to distinguish between electoral systems with racially biased procedures and those without is such a formidable task that it

should not be undertaken. For example. Abigail Thernstrom has said that "the process of identifying jurisdictions in which minority electoral opportunities are truly unequal is hazardous, and . . . the benefits of Federal intervention are unpredictable, while its costs are considerable . . . " (Thernstrom 1981). She has expressed the fear that Section 5 gives the Justice Department too much latitude and that federal objections will be erroneously interposed.

A procedure termed error analysis, used to study the decision-making process, can be usefully applied here because this approach helps to specify costs and benefits for all concerned. Table 4 below sets forth in systematic form the analytical possibilities in ambiguous electoral settings. There are four possible situations that can arise in the Justice Department's consideration of voting changes. The department may find voting discrimination to exist in a particular situation and that finding may be grounded in fact, a "true positive" situation. On the other hand, the same finding may be groundless, a "false positive." Conversely, the department may find that voting discrimination does not exist when in fact it does, a "false negative." Finally, the department may find that discrimination does not exist when it truly does not, a "true negative."

Table 4. Error analysis schema for voting rights cases.

	IN A GIVEN ELECTORAL DISTRICT, DENIAL OF VOTING RIGHTS IS THOUGHT TO	
	EXIST	NOT EXIST
BUT THIS BELIEF IS		
FALSE	False Positive	False Negative
TRUE	True Positive	True Negative

The concern that "federal objections will be erroneously interposed" concentrates entirely on one of the four possibilities, the "false positive" situation, to the exclusion of all the others. In that hypothetical situation, Justice Department attorneys will have erroneously determined that a proposed electoral change would discriminate against a racial minority and will have

interposed an objection under the Voting Rights Act. But this is a very narrow focus of concern in view of the fact that only 236 objections have been filed in response to 30,322 changes submitted in the past five years. That is, objections have been filed for less than one in a hundred of all submitted changes. Furthermore, the Act provides for legal appeal in those cases where election officials feel an erroneous Justice Department interposition has been made, adding a further safeguard against a "false positive" error occurring.

The Act does not provide for a corresponding avenue of appeal in a "false negative" situation, where discrimination is not found yet does in fact exist--that is where the Justice Department erroneously fails to interpose an objection to a proposed electoral change because it does not detect the denial of voting rights that actually will ensue.

If "false negative" errors occur, they must involve changes to which the Justice Department interposes no objection. There have been 30,086 such changes submitted during the past five years. Since the likelihood of Justice Department error is likely to be equal in either direction, the ratio of electoral changes approved to changes disapproved suggests that the chance of voting discrimination going undetected is 127 times greater than the chance of an electoral district being forced unnecessarily to forego electoral changes.

Error analysis also can serve to focus thinking on the consequences of alternative decision outcomes in cases of uncertainty. Such an anlysis of the costs of different types of errors in vote discrimination cases reveals that certain outcomes are far more costly than others. If Justice Department attorneys erroneously interpose an objection to a proposed change in electoral laws in a covered state and the error is not corrected on appeal, the jurisdiction will be required to continue to use the electoral procedures it had utilized before submission or resubmit. While this may cause delay in political proceedings and have financial consequences, the consequences for minorities when Justice Department attorneys erroneously fail to interpose an objection to a proposed change are a deprivation of a fundamental right--termed by Ronald Reagan "the most sacred right of free men and women."

Furthermore, the Voting Rights Act provides no avenue of appeal for minorities in this situation. The Supreme Court ruled in Morris v. Gressette (432 U.S. 491 1977) that once the attorney general has failed to raise a timely objection under Section 5, that action was not subject to judicial review. Thus, the only way the new electoral procedure can be challenged is through traditional suits attacking the procedure's constitutionality. The Court itself acknowledged the difficulty of using such an avenue

for vindicating minority voting rights, saying, "It is true that it was the perceived inadequacy of private suits under the Fifteenth Amendment that prompted Congress to pass the Voting Rights Act" at (505).

"Result" Test or "Intent" Test

At present, Section 2 of the Voting Rights Act provides that:

> No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color. 42 U.S.C. Sec. 1973.

From the time of its enactment in 1965 through 1980 this provision was understood to mean that state practices and procedures which deny voting rights were prohibited, whether they resulted from "intentional" or "inadvertent," "bad faith" or "good faith" actions on the part of state officials. The motives behind the discriminatory actions were immaterial, since what the Voting Rights Act seeks to prevent is the harmful consequences of these procedures.

The legislative history of the Voting rights Act of 1965 makes it clear that the focus of Congressional attention was on prohibiting practices that deny voting rights, whatever the motivation of the discriminating officials might be. For example, the House Report on the bill that became the Voting Rights Act of 1965 states that Section 2 grants "a right to be free from enactment or enforcement of voting qualifications . . . or practices which deny or abridge the right to vote on account or race or color." Clearly the focus is on the "qualifications" or "practices which deny or abridge the right to vote," and these prohibited qualifications or practices are identified on the basis of their impact--denying or abridging the right to vote--not by the motives or intentions of the officials involved.

But two years ago in the case Mobile v. Bolden, the Supreme Court misread the intent of Congress, gave a radically different interpretation to Section 2 of the Voting Rights Act, and concluded that only purposeful discrimination would violate Section 2.

To reach this result the Court had to ignore its own unanimous ruling to the contrary made seven years earlier in White v. Regester (412 U.S. 755, 1973). Justice Stewart's plurality opinion in Mobile identifies White as the only case in which the Supreme Court "sustained a claim that multimember

legislative districts unconstitutionally diluted the voting strength of a discrete group," (446 U.S. 55, at 68). The Court goes on to note that evidence was produced in White showing "a long history of official discrimination against minorities as well as indifference to their needs and interests on the part of white elected officials" and other evidence was produced showing "additional factors that restricted the access of minority groups to the political process," such as the fact that "Negroes effectively were excluded from the process of slating candidates for the Democratic Party" (at 69).

In his conclusion, Stewart states: "White v. Regester is thus consistent with 'the basic equal protection principle that the invidious quality of a law claimed to be racially discriminatory must ultimately be traced to a racially discriminatory purpose,' Washington v. Davis, Supra, at 240" (at 69).

In fact, the Court's unanimous opinion in White made no mention of discriminatory purpose, neither in the statement of evidentiary principles nor in the specific evidence it cites. Rather, the unanimous Court looked to characteristics of the political process itself, as an objective entity, and then to the effects of a given electoral process on the opportunity of minority individuals to exercise their political rights.

With regard to general principles of evidence in such cases, the Court stated: "The plaintiff's burden is to produce evidence to support findings that the political process leading to nomination and election were not equally open to participation by the group in question--that its members had less opportunity than did other residents in the district to participate in the political process and to elect legislators of their choice. Whitcomb v. Chavis." (412 U.S. 755 at 766). The evidence cited by the Court to prove that multimember legislative districts unconstitutionally diluted the voting strength of a discrete group bear on the nature of the political process--the words before the hyphen--and bear on the effect the process has on individuals in that electoral district in that part of the statement which follows the hyphen.

Similarly, when referring to the specific evidence developed by the U.S. District Court for the Western District of Texas, the original trial court in this case, the Supreme Court opinion identifies characteristics of the political process first and then validates that District Court's inference as to the effect of this process on minority citizens. The White opinion cites the following characteristics of the Dallas political process: (1) a "history of official racial discrimination in Texas, which at times touched the right of Negroes to register and vote and to participate in the democratic process," (2) the rules requiring majority vote for nomination in a primary election and a "place" rule, and (3) a history of exclusion, with "only two Negroes in the

Dallas County delegation to the Texas House of Representatives" since Reconstruction. The opinion goes on to say, "Based on the evidence before it, the District Court concluded that the black community has been effectively excluded from participation in the Democratic primary selection process, . . . and was therefore generally not permitted to enter into the political process in a reliable and meaningful manner. These findings and conclusions are sufficient to sustain the District Court's judgment with respect to the Dallas multimember district and, on this record, we have no reason to disturb them" (412 U.S. 755 at 767).

However, this balanced and reasonable approach to voting rights cases set out in White has been supplanted by the Mobile insistence that evidence of discriminatory purpose is necessary to show a violation of the Voting Rights Act's Section 2. The crippling effect this novel interpretation of the Voting Rights Act is likely to have on the vindication of voting rights can be seen in several recent cases involving discriminatory voting procedures.

Brown v. Post, 279 Fed. Supp. 60, was decided on January 4, 1968, in the U.S. District Court, Western District of Louisiana. The case involved a school board election in Madison Parish, Louisiana, in which a black candidate, Harrison Brown, had won the Democratic primary and was running against a white, J. T. Fulton, who had qualified as a write-in candidate a little more than a month before the general election. In the general election, J. T. Fulton received 1,891 votes, while 1,622 votes were cast for Harrison Brown. The margin of victory was thus 269 votes.

What distinguished this election from the commonplace is the distribution and source of the absentee votes. Although the overall balloting had been close, with J. T. Fulton picking up 54 percent of all ballots cast to Harrison Brown's 46 percent, the absentee balloting was far from close. In fact, of the 512 absentee votes cast, J. T. Fulton received 510--or 99.6 percent--while Harrison Brown received 2. Furthermore, although at the time of the August primary election, whites made up only 46 percent of the registered voters in the electoral district and blacks made up 54 percent, every single one of the absentee ballots was cast by a white voter and not one by a black voter. Without the absentee ballots, the results would have been reversed, with Harrison Brown receiving 1,620 of the non-absentee ballots, or 54 percent of the votes cast, and J. T. Fulton receiving 1,381, or 46 percent of the ballots.

The federal district court judge in the case found as a fact that the white election officials had discriminated against black voters by engaging in a number of prohibited activities in connection with the administration of absentee ballots. For example, a deputy clerk traveled to a white Delta Haven Nursing Home, where she helped fill in the absentee ballots for elderly

patients, telling them that J. T. Fulton was a white write-in candidate, without "extending this same opportunity" to patients in a black nursing home. The clerk in charge of administration of absentee voting in the parish took absentee ballots to the homes of white voters for them to mark there without doing the same for black voters. The same clerk went out to a plantation at the request of the wife of the owner of the plantation and made absentee ballots available to the white employees without making them available to black employees.

Despite all this illegal activity by the clerk and his deputies, which proved to be crucial to the electoral success of the white write-in candidate and the defeat of the black Democratic nominee, the trial judge concluded that such illegal behavior was unintentional. Without citing any evidence to bolster his conclusion, Judge Dawkins stated that "we do not find defendants engaged in any intentional plan to deprive Negroes of their constitutional right to vote. However, the manner in which they administered the absentee process was discriminatory in fact." Furthermore, the judge ruled that "defendants at all times acted in good faith attempting to comply with Louisiana absentee voting laws."

However, the judge's findings regarding the motives of the election officials were not germane to this case. That the administration of the absentee process was in fact discriminatory was the controlling factor. The judge noted that: "The Voting Rights Act of 1965 prohibits the imposition of any practice or procedure which has the effect of denying or abridging the right of any citizen of the United States to vote on account of race or color." Hence, he concluded: "Notwithstanding the good faith of defendants, the acts and practices of defendants . . . constitute an unlawful deprivation of the rights of qualified Negro voters to vote regardless of race or color as provided by . . . [Section Two]." Consequently, he had the election results set aside.

Under the Supreme Court's Mobile v. Bolden ruling, Judge Dawkins' findings that the administration of the absentee ballot process was discriminatory in effect would have been immaterial and the question of whether the election officials had been purposefully discriminatory would have been controlling. Discriminatory acts denying fundamental rights would have been beyond the control of the law merely because the motives behind the acts were not found to be committed in bad faith.

A case arising in Edgefield County, South Carolina, further illustrates the devastating effect the Supreme Court's Mobile decision is likely to have on the vindication of minority voting rights if Congress does not clarify its statute. The case of McCain v. Lybrand involved the method by which members of the Edgefield County Council are elected. The central issue was

whether the method of selecting members of the County Council, which involves at-large elections and requires that each of the five council members reside in separate residency districts, dilutes the voting rights of the black citizens of Edgefield County in violation of their constitutional rights.

After hearing the evidence, the Federal District Court stated in its findings of fact that the political system of Edgefield County had been and continued to be biased against blacks both in its processes and decisions.

Even though the 1970 Census figures indicate that blacks make up a majority--52 percent--of Edgefield County's population, and two of the five council districts contain a majority of black registered voters, blacks had either been totally excluded from serving at the polls or have done so only in token numbers. The Democratic party is dominant in the county, yet in all its history, Judge Chapman found, "no black has ever received a Democratic nomination or been elected to public office in a contested election in Edgefield."

Judge Chapman concluded, after reviewing the evidence of racial bias in the Edgefield political system, "By analyzing these elections, it was possible to get a closer picture of how elections take place in Edgefield County. The Court's overall finding is that blacks were virtually totally excluded up to 1970, and that since that time they have progressed to minimal tokenism."

The consequences of such a racially biased political system are discrimination in the distribution of goods and services. The court found that blacks had continued to be excluded from county employment by the County Council right up to the time of trial, that blacks had been excluded by the County Council from appointments to county boards and commissions, and that blacks in Edgefield County as a group had lower incomes, less education, and fewer employment opportunities than whites.

No evidence was presented to Judge Chapman that the act passed in 1966 creating the county council or one passed in 1971 expanding its size were enacted for the purpose of diluting black voting strength in either case. But, as the judge noted, " . . . this does not mean that they do not have the effect." Judge Chapman found in this case:

> Participation in the election process does not mean simply the elimination of legal, formal or official barriers to black participation. The standard is whether the election system as it operates in Edgefield County tends to make it more difficult for blacks to participate with full effectiveness in the election process and to have their votes fully effective and equal to those of whites. Black voters have no right to elect any particular candidate or number of

candidates, but the law requires that black voters and black candidates have a fair chance of being successful in elections, and the record in this case definitely supports the proposition and finding that they do not have this chance in Edgefield County.

If black candidates lose in the normal give-and-take of the political arena then the courts may not interfere. And under no theory of the law can a court direct a white to vote for a black or a black to vote for a white. However, if there is proof, and there is ample proof in this case, that the black candidates tend to lose not on their merits but solely because of their race, then the courts can only find that black voting strength has been diluted under the system and declare the same unconstitutional.

A week after Judge Chapman entered his order and judgment, the Supreme Court handed down its decision in Mobile, holding that plaintiffs must prove that an electoral scheme diluting minority voting rights was "conceived or operated as a purposeful device to further racial discrimination." Since evidence as to purpose had not been introduced in McCain v. Lybrand, Judge Chapman had no choice but to vacate his order.

The impact of an intent test is clearly shown in this example. Despite the ample proof of discriminatory effect, the blatantly racist electoral system in Edgefield County was allowed to continue to deny black citizens their constitutional rights merely because discriminatory purpose had not been shown.

The Voting Rights Act extension bill passed by the House of Representatives offers an amendment to reassert its original purpose in the 1965 measure. To make clear that Congress intended to prohibit actions resulting in discrimination, regardless of purpose, Section 2 is changed from reading "no . . . procedure shall be imposed . . . to deny or abridge the right . . . to vote" to saying "no . . . procedure . . . shall be imposed in a manner which results in a denial or abridgement of the right . . . to vote . . ." (emphasis added). This language is coupled with an amendment that states: "The fact that members of a minority group have not been elected in numbers equal to the group's proportion of the population shall not, in and of itself, constitute a violation of this section." This amendment merely serves to underscore what has been a proposition commonly accepted in voting discrimination cases.

Despite this disclaimer, some have argued that a result standard in Section 2 of the Voting Rights Act must lead to a political quota system. For example, Attorney General William French Smith, testifying before the Senate Subcommittee on the

Constitution, opposed the result standard, saying, "Quotas would be the end result. . . . The only ultimate logical result would be proportional representation."

But this logic itself is faulty. The reasoning involved in using a discriminatory results standard neither implies nor leads to racial quotas. To understand why this is so, it is useful to review the exacting logic governing permissible inferences from possible causal connections.

In cause and effect relations, three sets of possibilities exist. First, a necessary condition is one that must occur if the effect which follows from it is to occur. In other words, the effect never occurs unless the necessary condition also occurs. The trouble with necessary conditions is that sometimes when they are present, the effect will not occur anyway. Second, a condition is sufficient if it is one that is always followed by the phenomenon of which it is a cause. The trouble with sufficient conditions is that other causes can also result in the same phenomenon. Finally, a condition may be both necessary and sufficient for the occurrence of a phenomenon. In such a case, the effect never occurs unless the cause is present, and whenever the cause is present, the effect invariably occurs.

Table 5 applies the logic of causal analysis to minority vote dilution cases. If the unconstitutional bias of a given electoral system were both a necessary and sufficient condition causing underrepresentation of minority citizens, then the relationship between the nature of the electoral system, as cause, and representation of minorities, as effect, would be quite simple. As Table 5(c) shows, only when the electoral system is biased would minorities be underrepresented and only when the electoral system is neutral would you find an absence of underrepresentation.

Table 5. The logic of inferring system characteristics from minority representation.

	A. SUFFICIENT		B. NECESSARY		C. NECESSARY & SUFFICIENT	
ELECTORAL SYSTEM IS	Underrepresentation Present	Absent	Underrepresentation Present	Absent	Underrepresentation Present	Absent
Biased	X	O	X	X	X	O
Neutral	X	X	O	X	O	X

X = Cases are found with these two characteristics; 0 = No cases are found

Of course life is not this neatly simple, and finding causes which are both necessary and sufficient is rare indeed. At best, one is lucky to find causes that are either sufficient or necessary. The former, illustrated in Table 5, is the relationship between an unconstitutionally biased electoral system and underrepresentation of minority voters. A biased electoral system, for example, may be a sufficient cause of minority underrepresentation. But other factors, such as the history of partisanship in that particular district (as might be the case for black Democrats in a predominantly Republican district, or vice versa), can cause minority underrepresentation in electoral systems that are nonetheless constitutionally neutral. Since bias is not a necessary cause of minority underrepresentation, a mere finding that blacks or other minorities are not elected in proportion to their numbers in the population cannot logically lead to the inference that the electoral system is unconstitutionally biased. This is the key fallacy in the argument that, under the House-passed version of Section 2 of the Act, any finding of minority underrepresentation in an electoral district would automatically lead to a legal conclusion that the political arrangements there are unconstitutionally biased.

Precisely because an electoral system can be neutral with regard to minority political opportunities and yet exhibit racial underrepresentation, the unanimous Supreme Court in White v. Regester (1973) held that a "totality of the circumstances" surrounding the operation of an electoral system must be taken into account in determining whether that system is unconstitutionally biased. Factors to be considered include special electoral mechanisms that tend to repress majority representation (such as anti-single shot voting and majority rather than plurality requirements) and a history of official discrimination touching on the right of minorities to participate in the electoral process, as well as the degree of minority underrepresentation. In the White case, the fact that only two blacks had ever been part of the Dallas County delegation to the Texas House of Representatives since Reconstruction days was certainly not irrelevant to the finding that the system was unconstitutionally biased, but it could not be conclusive in and of itself.

Indeed, in Whitcomb v. Chavis (1971) the Supreme Court did just what those opposing the House-passed version of the Voting Rights Act's Section 2 fear they will not. In that case, the Court found a political system with severe black underrepresentation but refused to hold the system unconstitutionally biased, since other factors were deemed to have contributed to the level of underrepresentation.

In short, there is no logical connection between the discriminatory results test in Section 2 and proportional representation by race in legislatures. A results test in Section 2 of the Voting Rights Act will lead not to racial quotas but to a legal basis for protecting the fundamental right to vote. A continued intent test will frustrate that fundamental right.

CONCLUSION

This analysis suggests that President Reagan was wrong, as a matter of both fact and policy, when he stated on November 6, 1981, "I believe that the Act should retain the intent test under existing law, rather than changing to a new and untested effects standard."

It was a plurality of the Supreme Court that misread Section 2 of the Voting Rights Act in Mobile and imposed a novel "intent" test. Far from being "new and untested," the "effects" test had been the standard of Section 2 since its enactment and thus was used and tested in a large number of cases in the 16-year period between passage of the Voting Rights Act in 1965 and the Supreme Court's decision in Mobile.

The Supreme Court, in White v. Regester (402 U.S. 755 (1973) identified a number of factors that would indicate denial of equal access to the political process, including a history of official racial discrimination in elections, a historical pattern of a disproportionately low number of minority elected officials, and election rules blocking or diluting minority political participation, among others. In other words, the totality of factors tending to constrict minority political participation could be placed in evidence and could form the basis for a judicial judgment that the election process was discriminatory. Although not an easy task, this approach has proved feasible in the past, and it provides the most valid and reliable means for arriving at judgments as to the impact of vote dilution schemes on minority voting rights.

Furthermore, the Voting Rights Act with the "results" standard has been good public policy. The analysis of trends in minority electoral participation has shown how effective the Voting Rights Act has been in safeguarding minority voting rights. This effectiveness would be gutted if actions that deny any citizens their right to cast a fully effective vote should go unproscribed merely because the motivation of the responsible public officials could not be proved. President Reagan has himself stated clearly the objectives of this legislation: "The Voting Rights Act is important to the sense of trust many Americans place in their Government's commitment to equal rights. Every American must know he or she can count on an

equal chance and an equal vote." Minority Americans can only count on an equal vote when official actions that deny that equal chance are prohibited, whatever may be the murky motivations behind that denial.

But more is involved here than even citizen confidence and trust. Since ballots are the means by which we keep those who govern us responsible to our wishes, equality of voting rights is the best guarantee of equality of treatment by the government, whether that involves something intangible such as the quality of police protection or tangible benefits such as schools and libraries.

At the present time, particularly in the South, such equity is often visibly lacking. A visit to almost any southern town today reveals

> the same bleak testimonial to a still separated but unequal society: many largely white areas, marked by paved streets, generous street lighting, well designed sewage and drainage systems, inviting parks and recreation areas--in sharp contrast to black areas marked by dusty dirt roads turned to muddy rivers after heavy rains . . . The pattern was the same all over the South. When you reached the black part of town, it was as though there was a invisible wall . . . on the other side of which was a picture of total municipal neglect. [Lawyers Committee for Civil Rights Under Law, 1978]

Only when equality in the value of the ballot is fully achieved can equity be gained in the benefits of government.

NOTES

[1]No clear-cut evidence exists to explain why black voters even more than whites apparently overreport their electoral activity. It may be that blacks feel more strongly than whites that political participation is something they ought to take part in and thus have a stronger motivation to remember incorrectly or to consciously lie about it (see the discussion at page 25). On the other hand, the higher level of black versus white misreporting of registration and voting may be due to a greater tendency among black respondents than among white interviewees to feel social pressure in the interview situation to give socially acceptable responses.

Census Bureau recruitment procedures may also unwittingly result in less reliable and valid electoral data on black citizens than on whites. The Census Bureau interviewer is required to have a home telephone and an automobile as a prerequisite for holding a part-time job that has a full-time starting salary of $10,235. As a consequence of this combination of requirements, the great majority of interviewers are white, middle-class housewives. Only 5.6 percent of all Census Bureau interviewers are black. Thus many black respondents were questioned about their voting by whites. If there were greater matching of interviewer/respondent racial characteristics, it is quite possible that more valid electoral data might be obtained on black citizens (U.S. Department of Commerce, Bureau of the Census 1978).

[2]Why white voter registration was atypically underreported in these instances is not clear. The explanation may have something to do with the fact that Census estimates of voting-age population include military personnel, aliens, and institutional populations, while local election board counts may not.

Determining the true size of the voting-age population is problematic in many ways. For another example, blacks have long been undercounted by the Census, and such undercounting has the effect of inflating the proportions shown registered and voting, since the numerical base for determining these percentages is smaller than the real base.

[3]In general, the "South" referred to in this analysis is the standard Census region, which includes Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. The only available data on registration in the South for the 1964 election, however, excluded the "border South" states of Delaware, Kentucky, Maryland,

Oklahoma, and West Virginia. In this study, the "North" includes all nonsouthern states. Factors such as these are likely to account for the discrepancy between reported levels of black registration and voting in 1964.

[4]Sources reporting a higher level of participation among blacks include: Babchuk and Thompson, 1962; Matthews and Prothro, 1966, pp. 49-50; Orum, 1966; Olsen, 1970; Zurcher, 1970, p. 103; Verba and Nie, 1972, pp. 151-60; Aberback and Walker, 1972, pp. 30-34; Williams et al., 1973, p. 13; Greenberg, 1974, p. 42f.; Antunes and Gaitz, 1975; Teggert, 1975; Clemente and Sauer, 1975; London, 1975; Lamb, 1975, p. 109; McPherson, 1977; Cohen and Kapis, 1978; Klobus-Edwards et al., 1978. Even Wolfinger and Rosenstone report that, in their analysis of the 1972 election data, "blacks voted at a slightly higher rate than whites" (emphasis in original).

REFERENCES

Cavanagh, Thomas E.
1979. Changes in American Voter Turnout, 1964-1976. Paper was presented at the Annual Meeting of the Midwest Political Science Association, Chicago.

Cohen, Jeffrey E., Patrick R. Cotter, and Philip B. Coulter
1981. Black Political Participation in Alabama: Matthews and Prothro Twenty Years Later. Prepared for the 1981 Southern Political Science Association.

Katosh, John P. and Michael W. Traugott
1980. The Consequences of Validated and Self Reported Voting Measures in Studies of Electoral Participation. Prepared for the Annual Meeting of the Midwest Political Association, Chicago.

Katosh, John P. and Michael W. Traugott
1979. Response Validity in Surveys of Voting Behavior. Public Opinion Quarterly.

Lawyers' Committee for Civil Rights Under Law. 1978. Fifteenth Anniversary Report.

_____. 1981. Voting in Mississippi: A Right Still Denied. A Report on Continued Voting Rights Denials in Mississippi.

Morris, Milton D.
1975. The Politics of Black America. New York: Harper & Row.

Morris, Milton D. and Eddie Williams
1981. The Black Vote In a Presidential Election Year. Reprinted from the State of Black America, The National Urban League.

Nie, Norman H. And Sidney Verba
1972. Participation in America: Political Democracy and Social Equity. New York: Harper & Row.

Salamon, Lester M. and Stephen Van Evera
1973. Fear, Apathy and Discrimination: A Test of Three Explanations of Political Participation. The American Political Science Review, 67:1288-1326.

Shingles, Richard D.
1981. Black Consciousness and Political Participation: The Missing Link. The American Political Science Review, 75:76-90.

Terchek, Ronald J.
"Polyarchy and Participation: The Impact of the Voting Rights Act of 1965 in Mississippi," in The Analysis of Policy Impact. John G. Grumm and Stephen L. Wasby, eds., Lesingont, Mass.: Lexington Books, D.C. Heath and Company.

Thernstrom, Abigail M.
1979. The Odd Evolution of the Voting Rights Act. The Public Interest, 55:49-76.

Thernstrom, Abigail M.
1981. The Voting Rights Act: The Statutory Meaning of Electoral Discrimination. A Paper Delivered at the 1981 Annual Meeting of the American Political Science Association.

U.S. Bureau of the Census
1965. Current Population Reports. "Voter Participation in the National Election: November 1964." Washington, D.C.: U.S. Government Printing Office.

U.S. Bureau of the Census
1978. The Current Population Survey. "Design and Methodology. January." Washington, D.C.: U.S. Government Printing Office.

U.S. General Accounting Office
1978. "Voting Rights Act--Enforcement Needs Strengthening. February." Report of the Comptroller General of the United States.

U.S. Senate, Subcommittee on the Constitution
1981. Information Packet on the Voting Rights Act. October. Senator Orrin Hatch (R-Utah) Russell Senate Office Building.

Wolfinger, Raymond E. and Steven J. Rosenstone. 1980. Who Votes? New Haven: Yale University Press.

SELECTED BIBLIOGRAPHY OF VOTING RIGHTS ARTICLES

General

Atlanta Constitution, "Voting: A Right Still Denied," December 7-December 11, 1980.

Case studies of current VRA abuses; data on BEO's in black majority counties. Effectiveness of enforcement efforts.

Terchek, Ronald, "Political Participation and Political Structures: The Voting Rights Act of 1965," Phylon, December 1980.

Examines impact of abolition of poll tax; VRA on low income, high black density populations; public and private inputs on black voter registration in South.

Thernstrom, Abigail, "The Odd Evolution of the Voting Rights Act," The Public Interest, No. 55, Spring 1979.

She opposes the move from equal political opportunity to political equality. The effort to maximize the political effectiveness of a racial group may lead to political polarization of the society along racial lines.

White, Larry, Southern Congressional Politics: Change and Continuity Since The 1965 Voting Rights Act, unpublished disertation, Yale University, 1978.

Examines the nature of Southern politics after the passage of the 1965 Voting Rights Act.

Annexations

Jones, Murel, The Impact of Annexation-Related City Council Reapportionment on Black Political Influence: The Cities of Richmond and Petersburgh, Virginia, unpublished disertation abstract, Howard University, 1977.

Case studies to compare multimember at-large districts versus single member districts, due to annexation.

Resources and Minority Representation

Karnig, Albert, "Black Resources and City Council Representation," Journal of Politics, Volume 41, #1, February 1979.

Demonstrates the importance of black resources, white population factors, and electoral system characteristics in explaining black penetration of city councils.

Murray, Richard and Vedlitz, Arnold, "Race, Socioeconomic Status and Voting Participation in Large Southern Cities," Journal of Politics, Volume 39, No. 3, November 1977.

Demonstrates that levels of SES are less predictive of voting levels for black than for whites in large Southern cities.

Terchek, Ronald, "Polyarchy and Participation: The Impact of the Voting Rights Act of 1965 in Mississippi," draft unpublished.

This study examines the impact of the VRA in Mississippi. In counties with a low polyarchy profile, direct federal intervention had a significant effect. In the state at large, other factors account for increased black registration.

Election Structures

Cole, Leonard, "Electing Blacks to Municipal Office: Structural and Social Determinants," Urban Affairs Quarterly, Volume 10, No. 1, September 1974.

A study of New Jersey cities revealed that neither a majority black electorate nor a particular style of government are required to elect substantial numbers of blacks.

Davidson, Chandler and Korbel, George, "At Large Elections and Minority Group Representation: A Reexamination of Historical and Contemporary Evidence," publishing forthcoming in the American Journal of Politics.

Review of statistical evidence for dilutionary effects of at-large elections. Their findings strongly support the view that at-large elections dilute the votes of ethnic minorities.

Latimer, Margaret, "Black Political Representation in Southern Cities: Election Systems and Other Causal Variables," Urban Affairs Quarterly, Volume 15, No. 1, September 1979.

Identifies and measures the causal variables that affect black representation in cities in 3 southern states. Uses the black rate of representation statistics. Found that equitable representation for blacks in southern cities depends on election method; at-large elections have a negative impact on black representation.

Rabinovitz, Francine and Hamilton, Edward, "Alternative Electoral Structures and Responsiveness to Minorities," National Civic Review, July 1979.

The effectiveness of mixed district/at-large structure in increasing black representation, as determined by several case studies.

Seats and Population Relationship

Engstrom, Richard, "The Hale Boggs Gerrymander: Congressional Redistricting 1969," Louisiana History, 1973 (?).

Case study of 1969 redistricting in Louisiana. Plan favored Boggs.

Engstrom, Richard, "Racial Discrimination in the Electoral Process: The Voting Rights Act and the Vote Dilution Issue," Party Politics in the South, Robert Steed, Laurence Moreland, and Tod Baker, editors, (New York: Praeger Publishers, 1980).

Vote dilution is more difficult to challenge on constitutional grounds than vote denial. Preclearance has prevented many discriminatory changes from being attempted.

Engstrom, Richard and Wildgen, John, "Pruning Thorns from the Thicket: An Empirical Test of Existence of Racial Gerrymandering," Legislative Studies Quarterly, Volume II, No. 4, November 1977.

This study presents the conceptual basis for and an exemplary application of an empirical procedure through which a "reasonable presumption of gerrymandering may be established."

Engstrom, Richard and McDonald, Michael, "The Election of Blacks to City Councils: Clarifying the Impact of Electoral Arrangements on the Seats/Population Relationship," forthcoming in American Political Science Review, June 1981.

Supports the notion that structure affects black representation. Income levels affect election outcomes only when the black population is less than 15 percent.

Halpin, Stanley, and Engstrom, Richard, "Racial Gerrymandering and Southern State Legislative Redistricting: Attorney General Determinations Under the Voting Rights Act," Journal of Public Law, No. 22, 1973.

The extent of Section 5 protection depends on the extent of the Attorney General's exercise of his discretion. Reviews relevant court decisions.

O'Loughlin, John, "Black Representation Growth and the Seat-Vote Relationship," Social Science Quarterly, Volume 60, No. 1, June 1979.

Low turnout rates, the advantages of incumbency, membership in the Democratic party and racial bloc voting provide easy victories for blacks in inner city districts. This study suggests that black representation is likely to level off as these areas elect black officials.

Wildgen, John, and Engstrom, Richard, "Spatial Distribution of Partisan Support and the Seats/Vote Relationship," Legislative Studies Quarterly, Volume 3, August 1980.

They simulated elections to assess the impact of residential patterns on seat/votes relationship. Found that over half of non-party strength variance explained by geographical distribution.

Supreme Court

Engstrom, Richard, "The Supreme Court and Equipopulous Gerrymandering: A Remaining Obstacle in the Quest for Fair and Effective Representation," Arizona State Law Journal, (no date included).

Examines Supreme Court decisions which deal with representational districting. Describes a statistical procedure which can show discrimination in the districting process.

Engstrom, Richard, "Racial Vote Dilution: Supreme Court Interpretation of Section 5 of the Voting Rights Act," Southern University Law Review, Volume 4, No. 2, Spring 1978.

Constitutionally based challenges to most vote dilutive techniques remains distinctly difficult. Any relaxation in the legal protection is significant.

JCPS PUBLICATIONS

Black Crime: A Police View, edited by Herrington J. Bryce, 1977. ISBN 0-941410-03-X. $5.00.

Black Politics 1980, JCPS Office of Research, 1980. ISBN 0-941410-10-2.

A Guide to the Democratic National Convention. ISBN 0-941410-11-0. $10.00.

A Guide to the Republican National Convention. ISBN 0-941410-12-9. $10.00.

Blacks and the Shaping of U.S. Foreign Policy: Proceedings of a JCPS Roundtable, 1981. ISBN 0-941410-18-8. $5.00

The Black Vote: Election '76, JCPS Office of Research, 1977. ISBN 0-941410-04-8. $5.00.

The Coordination Game: A Second Look at the A-95 Review Process, Milton D. Morris, 1977. ISBN 0-941410-05-6. $4.50.

Election 1978: Implications for Black America, JCPS Office of Research, 1979. ISBN 0-941410-07-2. $2.00.

Energy and Equity: Some Social Concerns, edited by Ellis Cose, 1979. ISBN 0-941410-09-9. $8.50.

Energy and the Urban Crisis, Ellis Cose, 1978. ISBN 0-941410-08-0. $4.95.

Energy Policy and the Poor, JCPS Staff, 1977. ISBN 0-941410-06-4. $2.00.

Federal Review of Voting Changes: How to Use Section 5 of the Voting Rights Act, second edition, David H. Hunter, 1975. ISBN 0-941410-01-3. $3.50.

FOCUS, JCPS monthly newsletter. $12.00 per annum.

Foreign Trade Policy and Black Economic Advancement: Proceedings of a JCPS Roundtable, 1981. ISBN 0-941410-19-6. $5.00.

The Making of a Black Mayor: A Study of Campaign Organization, Strategies and Techniques in Prichard, Alabama, John Dean, 1973. ISBN 0-941410-00-5. $2.50.

New Federalism and Community Development: A Preliminary Evaluation of the Housing and Community Development Act of 1974, Milton D. Morris, 1975. ISBN 0-941410-02-1. $3.50.

The Nineteen Eighties: Prologue and Prospect, Kenneth B. Clark and John Hope Franklin, 1981. ISBN 0-941410-20-X. $5.00.

Picking a President: A Guide to Delegate Selection in the States, JCPS Office of Research, 1980. ISBN 0-941410-15-3. $5.00.

The Voting Rights Act: Myth and Fact, Eddie N. Williams, 1981. ISBN 0-941410-21-8. $3.00.

National Roster of Black Elected Officials, 1981, volume 11, 1982. ISSN 0092-2935. $23.00.

Vote Dilution, Minority Voting Rights, and the Courts, Stephen L. Wasby, 1982. ISBN 0-941410-22-6. $3.00.

The Voting Rights Act and Black Electoral Participation, Kenneth H. Thompson, 1982. ISBN 0-941410-24-2. $3.00.